

April 4, 2023

To the Federal Housing Advocate, Marie-Josée Houle

VIA ONLINE SUBMISSION

**RE: Submission on the Review of Encampments in Canada
Evictions of Hastings Tent City**

Dear Ms. Houle,

We submit this letter for the Advocate's consideration in reviewing encampments in Canada. We write on behalf of two organizations currently advocating for unhoused and inadequately housed people sheltering on the Downtown Eastside ("DTES") of so-called Vancouver, British Columbia, on the unceded, unsurrendered lands of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish) and səliłwətaʔl (Tsleil-Waututh) nations.

In our view, the sustained efforts of the City of Vancouver (the "City") and the Vancouver Police Department (VPD) to forcefully evict people sheltering outside in the DTES, coupled with government failure at all levels to provide adequate, accessible and safe housing in a meaningful, dignified and timely way, constitutes cruel, inhumane and degrading treatment.

LEAKED CITY MEMO

Just prior to making this submission, we received confirmation of a leaked City memo (see attached) setting out a plan to accelerate eviction operations against people sheltering outside. The plans described in the document corroborate the legitimacy and urgency of our concerns set out below, as it reflects an increased reliance on police intimidation and explicit recognition that people will be evicted with no housing offers, or with temporary shelter offers only.

BACKGROUND

The City of Vancouver, primarily through its Engineering Services department, has been routinely evicting unhoused and inadequately housed people sheltering outside

on the DTES for many years, seizing and destroying people's essential possessions. As occurs across the city, province, and country, some people choose to shelter outside as the best option among inadequate - or non-existent - alternatives, in the midst of the escalating housing crisis. Various municipal actors, including City engineering employees and members of the VPD, routinely seize possessions and displace people, frequently under the pretense of cleaning city streets, or so called "Street Sweeps".¹

After an intense push from residents and supporters back in October 2021, this practice was temporarily suspended along a small section of the DTES, the Hastings corridor, and the City worked more collaboratively with residents.² As a result, people had increased stability along the Hastings corridor and more people decided to be there, especially in light of dangerous and sometimes deadly conditions in the limited indoor housing options on the DTES. For example, in April 2022, the Winters Hotel burned down, killing two residents and displacing many others.³ Likewise, the tenants of the Portland Hotel, who were without a working elevator for several months, during which at least one resident died and many others with significant health conditions suffered significant physical hardship.⁴

Instead of taking action to create safe and accessible housing, increases in congestion and concerns over fire safety on the street were weaponized by City actors to justify a return to previous harmful practices. Actions against residents took a decisive turn for the worse after the recent election of a new City Mayor and Council.

In December 2022, we wrote to the Mayor and Council, the Chief of the VPD, and the Vancouver Police Board regarding our concerns; that letter is attached for your review. We CC'd the Premier of BC, the Honourable David Eby, and the Minister of Housing and Government House Leader, Ravi Kahlon. To date, we have only received brief responses from representatives of the VPD and the Board. Neither the Province nor the Mayor or Council have responded, and in the meantime, actions against residents have increased in severity and frequency.

¹ Pivot Legal Society, *#StopTheSweeps: Ending Cyclical Displacement and Criminalized Poverty in Vancouver* (2 May 2022) online: <https://www.pivotlegal.org/stop_the_sweeps_report>

² Stop the Sweeps, *Community groups, residents, & advocates organize to end street sweeps* (15 October 2021) online: <<https://stopthesweeps.ca/news/>>

³ Jen St. Denis, "Inside the Winters Hotel as It Burned", *The Tyee* (6 June 2022) online: <<https://thetyee.ca/News/2022/06/07/Inside-Winters-Hotel-Fire/>>

⁴ Arrthy Thayaparan, "'Crawling down stairs': Vancouver SRO residents with mobility issues want broken elevator fixed", *CBC* (6 Feb 2023) online: <<https://www.cbc.ca/news/canada/british-columbia/portland-hotel-broken-elevator-1.6739235>>

CURRENT CIRCUMSTANCES: ESCALATED AND ALARMING HUMAN RIGHTS CONCERNS

Through our own experiences, and through conversations with residents of the DTES and advocates, we continue to have the following urgent concerns, raised in our initial correspondence.

People sheltering along the Hastings corridor continue to be subjected to daily evictions with near complete disregard for their dignity and human rights. This includes:

- 1. Evicting residents from their shelters and seizing their possessions without providing adequate housing.**

This is a violation of domestic and international human rights law and an affront to the *National Housing Strategy Act*.⁵ The definition of “adequate” is clearly set out in international human rights law, and recognized under the *NHSA*. It includes, among other features, the right to: security of tenure, affordability, habitability, accessibility, and cultural adequacy.

City actors continue to assert that shelter beds, run-down SROs, and rights-violating “supportive” housing, are “suitable”, and justify police-enforced evictions. When asked how their definition of “suitable” accords with human rights principles, and recent case law in Canada clearly defining shelter beds as inaccessible, they refuse to answer.⁶

The fact there is insufficient adequate housing available is abundantly clear to anyone on the ground, but it has also been clearly acknowledged by the Provincial government. In a recent press conference the Province announced 330 new housing units will be provided to the DTES by June, specifically with the goal of providing enough housing for those sheltering on East Hastings.⁷ The lack of sufficient and adequate housing in Vancouver is also well-established

⁵ Leilani Farha & Kaitlin Schwan, *A National Protocol for Homeless Encampments in Canada*, UN Special Rapporteur on the Right to Housing (30 April 2020) online: <<https://www.make-the-shift.org/wp-content/uploads/2020/04/A-National-Protocol-for-Homeless-Encampments-in-Canada.pdf>>

⁶ See Appendix A.

⁷ Akshay Kulkarni, “Province and City of Vancouver announce new housing units in Downtown Eastside”, CBC News (26 March 2023) online: <<https://www.cbc.ca/news/canada/british-columbia/new-housing-units-downtown-eastside-1.6791772>>

from recent case law on decampment efforts.⁸ For the City to be carrying out these evictions now, when adequate housing is not available, is cruel and inhumane.

2. Evicting residents during extreme weather alerts and in sub-zero temperatures.

Despite the changing seasons, emergency weather responses were issued as recently as April 2, 2023, as temperatures continue to fall below 0 degrees, especially overnight.⁹ We previously asked the City to halt evictions due to the risks to residents' lives during cold weather circumstances, but in spite of these dangers, they have not done so.

3. Relying heavily on police to intimidate and pressure residents into complying with daily evictions.

The VPD have been accompanying City officials to support the eviction process and engage in intimidation tactics against residents. As noted above, the recently leaked memo on the City's plans for decampment reveals that the VPD will continue to be used to enforce evictions without full regard for the residents' Constitutionally protected rights.

The following additional concerns have arisen since our original correspondence with the City and the Province.

- 1. At the City's request, the VPD are creating ever-expanding "work zones", when they are enforcing evictions alongside City workers.** We hear that legal observers and advocates are increasingly being threatened with arrest and criminal charges if they attempt to enter these zones to witness and provide support to residents undergoing evictions. The City's excuses about "work safety" are undermined by the fact that non-observers are permitted to come and go through these work zones relatively unimpeded.

These actions are an extreme threat to the fundamental human rights of people subjected to eviction. They impede the ability of observers to witness and record the actions of on-duty police officers. Legal observers cannot properly document state actions based on sight alone; hearing interactions is critical to assessing a

⁸ *Bamberger v. Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49 at paras 98-124.

⁹ HSABC_MVEWR, "Metro Vancouver Extreme Weather Shelter Activations - April 2, 2023...Click here for a list of open EWR shelters across Metro Vancouver...". Twitter, (2 Apr 2023), online: <<https://twitter.com/EWRMetroVan/status/1642648633509318656?cxt=HHwWgMDUsdSO7sstAAAA>>

state actor's alleged legal authority and the fairness of their engagement with people on the Hastings corridor, and proximity is crucial to providing evidence in future court cases regarding wrongful arrests and Charter violations.

Furthermore, residents deserve to have advocates present when they are being forcefully removed from public space, and if they are being pressured to accept what are usually inadequate shelter offers, in the face of forced eviction to nowhere.

2. **Advocates have confirmed that shelters in the DTES have been asked to hold shelter beds in order to facilitate ongoing evictions.** This tactic ignores human rights requirements regarding adequate housing, as we set out above. It also means that shelter spaces are being withheld from other people who are currently outside and may wish to access that option, in order to assist the City in performing the illusion of an ethical and lawful eviction.
3. **The ever-expanding use of police “work zones” poses a grave and imminent threat to all residents of the DTES, both housed and unhoused, who rely on the neighborhood’s many low-barrier support services.** The use of “work zones” has created a dynamic that places VPD officers in the position of determining whether residents’ requests to enter vital spaces such as overdose prevention sites are legitimate or pressing.

As per the 2016 Order issued by Health Minister Terry Lake under the *Health Emergency Services Act* and *Health Authorities Act* to address the drug toxicity crisis that currently claims the lives of 7 BC residents per day, municipalities must provide emergency overdose prevention services wherever there is demonstrable need. The VPD presence on the DTES, and their intentional erection of barriers to mobility, directly contravenes this Order. Residents should not have to rely on police discretion to access health services, nor should the City exacerbate the risk of drug-related distress, disease transmission, and fatal overdose.¹⁰

¹⁰ See: BC Ministry of Health, “Ministerial order supports urgent overdose response action”, BC Government News (12 December 2016) online: <<https://news.gov.bc.ca/releases/2016HLTH0094-002737>>; Caitlin Shane, *The Duty to Provide Overdose Prevention Services*, (2 September 2022) online: Pivot Legal Society <<https://www.pivotlegal.org/the-duty-to-provide-overdose-prevention-services>>; Alistair Taylor, “Campbell River dumps controversial bylaws banning public drug consumption”, Saanich News (26 February 2023) online: <<https://www.saanichnews.com/news/campbell-river-dumps-controversial-bylaws-banning-public-drug-consumption/>>

4. **Legal observers witnessed that Car 87 was called this past week, when an individual refused to decamp.** Car 87 is a joint program run by the VPD and Vancouver Coastal Health that pairs VPD officers with psychiatric nurses who have the power to apprehend people under BC's *Mental Health Act*. It is routinely criticized for being unreliable and dangerous for people experiencing a mental health crisis, particularly because past traumatic encounters with police exacerbate distress, elevating the risk of police-involved deaths.

We are extremely concerned that the City is enlisting these highly coercive measures, which foreground the threat of involuntary mental health detention, to elicit compliance from residents. We note that VPD officers have the power to apprehend and send people to a psychiatric hospital under the *Mental Health Act*,¹¹ and without proper oversight, could be employing this power as a decampment tactic. Psychiatric intervention is not an appropriate response to material deprivation, nor should it be deployed to pressure residents as they assert their basic rights.¹²

CRUEL, INHUMANE AND DEGRADING TREATMENT

We believe the actions and failure of local government towards our fellow community members constitutes cruel, inhumane and degrading treatment prohibited by Article 7 of the *International Covenant on Civil and Political Rights*, which is binding on Canada.

These actions also arguably violate s. 12 of the *Charter* as unhoused and inadequately housed people are being subjected to cruel and unusual treatment by state actors for simply trying to exist in a way that feels safe. The City and VPD are using municipal by-laws to deal with a problem that all levels of government refuse to resolve in a meaningful and dignified way. In essence, people are subjected to daily harassment, property seizures, and police violence for being without adequate housing. The cumulative impact of this practice amounts to cyclical displacement, dispossession and criminalized poverty.¹³ This situation is particularly compounded for Indigenous peoples, members of diaspora populations, and people with disabilities.

¹¹ *Mental Health Act*, RSBC 1996 C 288 at s 28(1).

¹² Meenakshi Manoe, *Involuntary Treatment: Criminalization by another name*, Pivot Legal Society (23 Mar 2023), online: <https://www.pivotlegal.org/pivot_legal_society_position_paper_calls_for_the_elimination_of_involuntary_treatment_in_bc>, p. 7

¹³ <https://stopthesweeps.ca/about/>

As recently stated by the Ninth Circuit court in Idaho, “the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”¹⁴

SOLUTIONS

1. The City of Vancouver and Province of British Columbia should adopt a human rights based approach to engaging with people sheltering outside, and adopt the UN Special Rapporteur’s “A National Protocol for Homeless Encampments in Canada” as official government policy.¹⁵
2. The City of Vancouver should halt its police-enforced evictions of the Hastings corridor residents.
3. The City of Vancouver should engage meaningfully with residents of the Hastings corridor, treating them with dignity and respect, to discuss their needs and how to meet and exceed human rights and Constitutional requirements.
4. The VPD should cease participating in decampment efforts, including the intimidation of legal observers and resident supporters who are seeking to ensure the safety of the Hastings corridor residents.
5. The City of Vancouver should stop using police-enforced work safety zones to block legal observers and resident supports, which limits access to vital community resources such as overdose prevention sites at VPD discretion.
6. The City of Vancouver and VPD should immediately stop using mental health detentions as a perverse means of displacing residents.
7. The Province of British Columbia should ensure that its planned housing projects meet the definition of “adequate” as set out in domestic and international law. In the interim, the Province of BC should work closely with the City of Vancouver to ensure substandard housing and shelter are not being used to legitimize coercive evictions.

¹⁴ Patrick Sisson, “Martin vs. Boise: Homeless people gain ‘de facto right’ to sleep on sidewalks through federal court”, Curbed (16 December 2019) online: <<https://archive.curbed.com/2019/4/5/18296772/supreme-court-homeless-lawsuit-boise-appeals-court>>

¹⁵ *Supra* note 5

8. The federal and British Columbia governments should protect “social condition” within the *Canadian Human Rights Act*, and *BC Human Rights Code*, so that people with no housing status and people living in poverty are not subject to by-laws that discriminate against them based on unchangeable characteristics.

Sincerely,



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Legal Director
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Veronica Martisius
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**CC: The Honourable David Eby, Premier of British Columbia
The Honourable Ravi Kahlon, Minister of Housing and Government House
Leader
Minister of Mental Health and Addictions
Ministry of the Attorney General
Mayor Ken Sim and Vancouver City Council**

APPENDIX "A"

On February 6, 2023, Pivot Legal Society, in response to a request to meet, responded to General Managers with the City of Vancouver's Engineering Services, and Arts, Culture & Community Services divisions asking the following questions. We have yet to receive a written response to these questions. An excerpt of Pivot's email conversation and request for information is below:

... Prior to considering any offer to meet, we would ask that your team provide the following information:

1. Any current City policy or memo setting out the City's current approach to evicting people sheltering on City streets. This includes what steps, if any, must be taken to ensure adequate housing is available prior to eviction.
2. What the City currently considers a "suitable space" for the purposes of the COV's MOU with the Province and Parks' Board on Support for Unsheltered Vancouver Residents: <https://parkboardmeetings.vancouver.ca/files/MOU-SupportingUnshelteredVancouverResidents-BC-COV-PB-20210331.pdf>.

In particular, how the City is accounting for recent and ongoing legal decisions which clearly state that shelter beds alone are not sufficient to ensure evictions do not violate the *Charter*:

Abbotsford (City) v Shantz, 2015 BCSC 1909 at para 82; *Prince George (City) v Stewart*, 2021 BCSC 2089 at para 74; *Bamberger v. Vancouver (Board of Parks and Recreation)*, 2022 BCSC 49 at para 123; *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 at para 93

3. Any other policy or memo which sets out how your current eviction operations are in keeping with the rights of unhoused and inadequately housed people in general, and the rights of Indigenous peoples specifically.
4. The City's current information on the following:
 1. The number of people who are unhoused in the City of Vancouver (including people in shelters).
 2. The current number of shelter beds, and how many will still be open by the beginning of April.

3. The current length of relevant waitlists for low-income housing in the City of Vancouver.

We believe the above will be very helpful for ensuring we all have the same basic information prior to discussing the utility of any in-person meeting. Of course, we would attend any such meeting only with directly affected community members and their advocates.

There is clearly an immense gap between the way the City is characterizing its operations, and the way these operations are being experienced by people living on the street. The above information should help us focus in on how these discrepancies are arising.